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Order 2002-6-21

Served: July 3, 2002



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 28th day of June, 2002

Essential Air Service at

UTICA/ROME, NEW YORK

under 49 U.S.C. 41731 *et seq.*

Docket OST-2000-7556-28

FINAL ORDER

Summary

By this order the Department is (1) denying the objections to Order 2002-4-26, filed by the State of New York, Department of Transportation, and by the Utica/Rome Airport, and (2) confirming the tentative findings and conclusions of Order 2002-4-26.

Background

By Order 2002-4-26, issued April 30, 2002, the Department tentatively terminated the subsidy eligibility of Utica/Rome, New York, after June 30, 2002, because the cost of subsidizing each passenger using the local airport exceeded the \$200 subsidy-per-passenger statutory ceiling. Interested parties were given 20 days after the date of service of the order to show cause why we should not make final the tentative findings and conclusions set forth on the order.

Objections to Order 2002-4-26

Objections to Order 2002-4-26 were filed by the State of New York, Department of Transportation (NYDOT), and by the Utica/Rome Airport.

NYDOT

On May 23, NYDOT submitted a letter to the Department containing recommendations regarding essential air service for the Upstate New York communities of Massena, Ogdensburg, Watertown and Utica. The State maintains that service at all of these

communities is interrelated and that a final decision in the Utica case should not be made independent of the service proposals for Massena, Ogdensburg and Watertown.

Specifically, NYDOT objects to the termination of subsidy at Utica/Rome because it believes that the current service provided by CommutAir¹ has not had a chance to build a customer base as service has undergone numerous changes in the last couple of years. NYDOT states that the community has had to contend with shifts in service hubs from Newark to Boston (via Syracuse), to JFK and now to LaGuardia. Furthermore, with assistance of a State and county-funded promotional campaign (begun before the tragic attacks of September 11) traffic has responded. NYDOT also states that CommutAir has adjusted its schedule to make it more attractive for a one-day business trip to New York City, and JetBlue has cancelled its early morning flight out of Syracuse to JFK.

Additionally, NYDOT supports the proposal of CommutAir to extend its current Utica-JFK service to Watertown. By doing so, NYDOT states that the communities will meet the \$275 Federal subsidy-per-passenger limit, proposed by the Administration for FY03, which would not be attainable by them separately. According to NYDOT, using a conservative estimate of passengers for combined Watertown-Utica service, the subsidy per passenger would be \$246, below the Administration's proposed subsidy cap.

Utica/Rome Airport

Also on May 23, an objection was filed by the Utica/Rome Airport (Airport). The Airport states that air service, supported by EAS subsidy, is essential to maintain the current level of economic activity, and that without air service there would be no growth. Therefore, the Airport urges the Department to continue subsidies to the Utica/Rome community at or above current levels.

The Airport states that funding to small communities has undergone significant changes since its inception in 1978, and today, present funding levels for the EAS program are insufficient and fail to address the quality of air service at Utica/Rome and other small communities. Over the years, the Airport states that budget restraints have required the Department to alter eligibility requirements for the program, thus eliminating small communities not meeting the revised requirements. The Airport states that this is the wrong approach to address the funding problems within the program.

The Airport also cites inflation, airline industry consolidation, the introduction of regional jets, and increased regulatory burdens brought about by the changeover from FAR 135 to FAR 121 regulations for operators of 19-seat aircraft, as contributing factors to the funding problem.

Like NYDOT, the Airport states that one solution to the loss of EAS subsidy at Utica would be to combine the current subsidy for Utica with the proposed subsidy for the

¹ By Order 2001-3-31, March 30, 2001, the Department authorized an annual subsidy rate of \$1,133,415 for Champaign Enterprises, Inc., d/b/a CommutAir, to provide essential air service at Utica/Rome consisting of twelve nonstop round trips each week to New York City (JFK).

extension of service beyond Utica to Watertown. In a table included with the Airport's comments, subsidies and passenger levels for Utica and Watertown are combined showing that the amount of subsidy per passenger to be \$256, below the administration's proposed subsidy cap of \$275.

Decision

We are denying the objections of NYDOT and the Utica/Rome Airport. We disagree with much of the Airport and NYDOT's comments, especially as they relate to the \$275 subsidy-per-passenger cap. First, that eligibility standard is one that has been proposed by the administration for fiscal year 2003; however, under current law, only Congress can establish eligibility criteria -- not the Department of Transportation. Further, under the administration's proposal, the \$275 cap would be *in addition to, not in lieu of*, the current \$200 cap. Under the current standards, the Department is prohibited from subsidizing air service at communities in the lower 48 states where the subsidy per passenger exceeds \$200, unless that community is more than 210 miles from the nearest large and medium hub airport. The administration's proposed \$275 ceiling, on the other hand, is a hard cap, i.e., we would be prohibited from paying subsidy to *any* community whose subsidy-per-passenger exceeded \$275, regardless of isolation, the only exception being the State of Alaska.

Both NYDOT and the Airport's analyses combine Watertown and Utica in the same route structure in an attempt to lower the Utica subsidy per passenger. However, under their analyses, the subsidy-per-passenger for both Watertown and Utica, while below \$275, are above the current statutory cap of \$200 meaning that we would have to terminate subsidy at both communities.²

However, stepping back from the mechanics of the calculations, neither the Airport nor NYDOT dispute the fundamental facts of the case, and they have not changed. As we stated in the show-cause order, Southwest Airlines has served Albany with low-fare jet service since May 2000, and the Albany airport is about 90 highway miles away on the New York State Thruway. In addition, JetBlue inaugurated low-fare jet service at Syracuse, about 49 miles away, also via the New York State Thruway, on May 7, 2001. Since Southwest inaugurated service at Albany, Utica's traffic has fallen significantly. With JetBlue now at Syracuse, and with the abundant amount of additional service available from other carriers at both Albany and Syracuse, we see little chance of a reversal of passengers' continuing to drive to these two airports to take advantage of the low-fare jet service.

² NYDOT and the Airport's methodology was to combine both the subsidy amounts and the passenger levels for both communities and then divide to get a single aggregate subsidy per passenger. Our longstanding methodology when calculating subsidy-per-passenger levels for an A to B to hub routing is to use the total subsidy, as NYDOT and the Airport did, and take one-half of the subsidy and assign it to each community and then divide by each community's annual passengers. Under that methodology, because Watertown generates significantly more passengers than Utica, it would remain below the \$200 cap.

This order is issued under authority delegated in 49 CFR 1.56a(f).

ACCORDINGLY,

1. We deny the objections filed by the New York State Department of Transportation and the Utica/Rome Airport in Docket OST-2000-7556;
2. We make final our decision in Order 2002-4-26, terminating the subsidy eligibility of Utica/Rome, New York, after June 30, 2002, and allowing Champaign Enterprises, Inc., d/b/a CommutAir, to terminate service at the community after that date;
3. Docket OST-2000-7556 shall remain open until further order of the Department;
and
4. We will serve a copy of this order on the mayors of Utica and Rome, the manager of the Oneida County Airport, the New York Department of Transportation, the Governor of New York, and CommutAir.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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